

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Aubria Carter,

Plaintiff,

v.

Performant Recovery, Inc.; and DOES 1-10,
inclusive,

Defendants.

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: Civil Action No.: 1:14-cv-10378
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: **COMPLAINT**
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For this Complaint, Plaintiff, Aubria Carter, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendants' repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (the "FDCPA").
2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

4. Plaintiff, Aubria Carter ("Plaintiff"), is an adult individual residing in Worth, Illinois, and is a "consumer" as the term is defined by 15 U.S.C. § 1692a(3).
5. Defendant, Performant Recovery, Inc. ("Performant"), is a California business entity with an address of 333 North Canyons Parkway Suite 100, Livermore, California 94551-9480, operating as a collection agency, and is a "debt collector" as the term is defined by 15 U.S.C. § 1692a(6).
6. Does 1-10 (the "Collectors") are individual collectors employed by Performant

and whose identities are currently unknown to Plaintiff. One or more of the Collectors may be joined as parties once their identities are disclosed through discovery.

7. Performant at all times acted by and through one or more of the Collectors.

ALLEGATIONS APPLICABLE TO ALL COUNTS

A. The Debt

8. Plaintiff allegedly incurred a financial obligation (the “Debt”) to an original creditor (the “Creditor”).

9. The Debt arose from services provided by the Creditor which were primarily for family, personal or household purposes, which meets the definition of a “debt” under 15 U.S.C. § 1692a(5).

10. The Debt was purchased, assigned or transferred to Performant for collection, or Performant was employed by the Creditor to collect the Debt.

11. Defendants attempted to collect the Debt and, as such, engaged in “communications” as defined in 15 U.S.C. § 1692a(2).

B. Performant Engages in Harassment and Abusive Tactics

12. Within the last year, Performant placed a call to Plaintiff’s place of employment, which is a hospital. Plaintiff was unavailable, and the call was transferred to one of Plaintiff’s coworkers. The collector, “Paul Walters,” claimed that he was one of Plaintiff’s patients in an attempt to trick the coworker into divulging Plaintiff’s personal information.

13. During the same conversation, Walters asked to be transferred to a financial counselor. When Plaintiff’s coworker asked why, Walters again demanded Plaintiff’s personal information.

C. Plaintiff Suffered Actual Damages

14. Plaintiff has suffered and continues to suffer actual damages as a result of

Defendants' unlawful conduct.

15. As a direct consequence of Defendants' acts, practices and conduct, Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional distress, fear, frustration and embarrassment.

COUNT I
VIOLATIONS OF THE FDCPA - 15 U.S.C. § 1692, et seq.

16. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

17. Defendants' conduct violated 15 U.S.C. § 1692b in that Defendants spoke with a third party for a purpose other than to confirm or correct location information.

18. Defendants' conduct violated 15 U.S.C. § 1692d in that Defendants engaged in behavior the natural consequence of which was to harass, oppress, or abuse Plaintiff in connection with collection of the Debt.

19. Defendants' conduct violated 15 U.S.C. § 1692e in that Defendants used false, deceptive and/or misleading representations or means in connection with collection of the Debt.

20. Defendants' conduct violated 15 U.S.C. § 1692e(10) in that Defendants employed false and deceptive means to collect the Debt.

21. Defendants' conduct violated 15 U.S.C. § 1692f in that Defendants used unfair and unconscionable means to collect the Debt.

22. The foregoing acts and omissions of Defendants constitute numerous and multiple violations of the FDCPA, including every one of the above-cited provisions.

23. Plaintiff is entitled to damages as a result of Defendants' violations.

COUNT II
VIOLATIONS OF THE ILLINOIS COLLECTION AGENCY ACT
225 ILCS 425/1, et seq.

24. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully set forth herein at length.

25. A private right of action exists for violation of the ICAA. *Sherman v. Field Clinic*, 74 Ill. App. 3d 21, 392 N.E.2d 154 (1st Dist. 1979).

26. Performant Recovery, Inc., in the regular course of business, engages in debt collection and is a “collection agency” as defined by 225 ILCS 425/2.02.

27. Defendants’ conduct violated 225 ILCS 425/9(a)(31) in that Defendants engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.

28. The foregoing acts and omissions of Defendants constitute numerous and multiple violations of the Illinois Collections Agency Act, including every one of the above-cited provisions.

29. Plaintiff is entitled to damages as a result of Defendants’ violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be awarded in Plaintiff’s favor and against Defendants as follows:

1. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A);
2. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
3. The costs of litigation and reasonable attorney’s fees pursuant to 15 U.S.C. § 1692k(a)(3);
4. All available damages pursuant to 225 ILCS 425/1;
5. Punitive damages; and

6. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: December 29, 2014

Respectfully submitted,

By /s/ Sergei Lemberg

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